

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
HORSEHEADS WOMEN’S CLUB	:	DETERMINATION DTA NO. 816160
for Redetermination of Exempt Organization Status under Articles 28 and 29 of the Tax Law.	:	

Petitioner, Horseheads Women’s Club, P.O. Box 321, Horseheads, New York 14845,
filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the
Tax Law.

On January 2, 1998 and January 5, 1998, respectively, petitioner, by its president, Susan
W. Kelley, and the Division of Taxation by Steven U. Teitelbaum, Esq. (Vera R. Johnson, Esq.,
of counsel), waived a hearing and agreed to submit the matter for determination based upon
documents and briefs to be submitted by April 24, 1998, which date commenced the six-month
period for issuance of this determination (Tax Law § 2010[3]). After due consideration of the
evidence and arguments submitted, Dennis M. Galliher, Administrative Law Judge, renders the
following determination.

ISSUE

Whether the Division of Taxation properly denied the application of petitioner, Horseheads
Women’s Club, for a sales tax exempt organization certificate.

FINDINGS OF FACT

1. On February 14, 1997 petitioner, Horseheads Women's Club, filed an Application for an Exempt Organization Certificate (Form ST-119.2), seeking exemption from sales and use taxes as a charitable organization pursuant to Tax Law § 1116(a)(4).

2. Petitioner is a not-for-profit organization with approximately 124 members, including honorary members. According to its constitution petitioner is organized for charitable purposes. Petitioner's primary goal, as set forth in its Statement of Activities, is to improve the quality of life in the community through charitable contributions. In order to achieve this goal, petitioner conducts or sponsors various fund-raising projects. The proceeds of these projects plus petitioner's membership dues are, after expenses, donated to exempt organizations, nonexempt organizations, and to various high school students through petitioner's scholarship program.¹

3. The projects and events sponsored by petitioner during the period 1994 through 1996 included antiques shows, bridge tournaments, fashion shows and card parties, cook book sales, Holly Days, rummage sales, a fall dinner, a Christmas dinner and a June luncheon. Except for the fall dinner, Christmas dinner and June luncheon, the foregoing projects serve as fund-raising events. These events are more specifically described as follows:

a) The antiques shows are co-sponsored by petitioner and the Horseheads Historical Society. They are held at Horseheads High School and are open to the public. Petitioner sells food and raffle tickets at the shows and receives payments from antiques dealers for the right to display goods at the shows.

b) The bridge tournaments begin in the fall and end in the spring and are open to the

¹ In order to increase interest in and applications for this program, petitioner changed the name of the program from "scholarship" program to "award" program.

public. Players include club members and nonmembers. The participants pay an entry fee to petitioner in order to participate in the tournaments. Money prizes are awarded to the winners.

c) The fashion shows and card parties are open to the public with an admission fee charged. Raffle tickets are also sold.

d) The cookbook project involves the production of cookbooks which are sold to the public.

e) Holly Days involves petitioner's sale of baked goods and beverages.

f) The fall dinner is held annually in September. Petitioner's annual budget is presented to the membership at this dinner. The individual members are charged a fee which is intended to cover the cost of their dinners. Entertainment is provided at this dinner.

g) The Christmas dinner is held annually in December and is referred to as being a party. The dining room where the dinner is held is decorated with small decorations and table centerpieces and entertainment is provided. As with the fall dinner, individual members pay a fee which is intended to cover the cost of their meals.

h) The annual June luncheon is the last meeting of petitioner's fiscal year and includes an introduction of petitioner's new officers for the upcoming year. Again, the members pay a fee designed to cover the cost of their meals.

4. The fee paid by each member to cover the cost of the meal at the fall dinner, Christmas dinner and June luncheon is paid to petitioner, and petitioner in turn issues a check in payment for the meals to the restaurant providing the meals. These fees and payments, as well as petitioner's payments for other expenses of these events, including the cost of decorations, corsages, entertainment and gifts, are reflected on petitioner's books and records as income and expenses, respectively.

5. Petitioner holds monthly meetings, with the exception of July and August when no meetings are scheduled. These meetings, at which minutes are kept, typically include reports by the secretary and treasurer, and committee reports with respect to fund-raising and other ongoing and upcoming projects. The meetings include other matters such as admission of new members, introductions of guests attending with members, acknowledgments of sympathy cards, thank you notes and the like sent or received. There is a 50/50 raffle at each meeting, and a game in which a member brings a mystery gift basket to be awarded to the member guessing the contents of the basket. There is also some program or form of entertainment presented at the meetings, with refreshments following.

6. A review of the minutes of petitioner's meetings between September 1995 and April 1997, and of several of petitioner's newsletters, reveals the following programs and entertainment at petitioner's meetings:

<u>MEETING DATE</u>	<u>DESCRIPTION</u>
09/12/95	September dinner at Glenora Vineyard. Lecture on Glenora Vineyard.
10/03/95	Tour of C.J.'s Miniature Horse Farm.
11/06/95	Lecture on Tanglewood.
12/05/95	Christmas dinner at Pierce's 1894 Restaurant Piano entertainer; prizes and table gifts.
01/10/96	Lecture on preserving family heritage.
02/06/96	Story teller from Steele Memorial Library.
03/05/96	Lecture on elder hostels.
05/06/96	No program listed--refreshments served.
06/01/96	June luncheon at Elmira Country Club.

	Presentation on flower arrangements. Three arrangements awarded as door prizes.
09/10/96	September dinner at London Underground.
10/01/96	Lecture on a member's trip to Japan.
11/05/96	Lecture and slide show about Mark Twain. Tour of house.
12/03/96	Christmas dinner at Strathmont Discussion of Christmas customs. Singalong and table gifts.
01/07/97	Lecture on basket making.
02/04/97	Presentation on making a sweetheart torte.
03/03/97	Irish music played and sung by Donald O'Shaughnessy.
04/01/97	No program listed--refreshments served.

7. During the period 1994 through 1996, petitioner made contributions to the Horseheads Free Library, Horseheads High School and BOCES Senior Awards, Horseheads Youth Bureau, Horseheads Food Pantry, Reading is Fundamental, Horseheads Family Days, Horseheads Project Graduation, Elmira Heights Youth Bureau, Health Center for Women, YWCA of Elmira and Twin Tiers, and Summer Cohesion. Graduation scholarships were also awarded to 12 Horseheads High School students, with the scholarship recipients selected by the Horseheads High School Guidance Department. Petitioner's contributions to these causes totaled \$2,025.00 for the fiscal period July 1, 1994 through June 30, 1995, and \$2,100.00 for its fiscal period July 1, 1995 through June 30, 1996. Petitioner's members do not benefit personally from any of the fund-raising events conducted by petitioner.

8. For petitioner's fiscal year ended June 30, 1996, expenditures totaled \$7,063.13. The Division of Taxation ("Division") determined that \$3,495.75, representing 49.4% of such total expenditures, represented expenses incurred in connection with social and recreational events. More specifically, the Division included the costs of the bridge tournament, fashion show and card party, fall dinner, Christmas dinner and June luncheon, as expenses incurred for social and recreational events. In contrast, the Division did not consider expenses for insurance, members' booklets, newsletters, postage, letterhead, member cards, a coffee pot, dues to the Chemung County Council of Women, flowers, gifts, memorials and contributions to be social or recreational in nature.

9. On the basis of its review, the Division issued a letter dated July 23 1997 denying petitioner's application for exempt status, concluding that although some of petitioner's activities are charitable, a substantial portion of petitioner's activities involved nonexempt (i.e., social and recreational) purposes.²

10. Petitioner challenged the Division's denial by filing a petition. Petitioner argues that the Division erred in its analysis of the financial information submitted by petitioner. Petitioner maintains that the income from fund-raising events should be considered business income and not income from social events. Petitioner also argues that although the fall dinner, Christmas dinner and June luncheon are not fund-raising events, the monies received in connection with these events should not be considered income to petitioner because such receipts merely

² The Division also denied petitioner's application on the basis that petitioner failed to meet the so-called organizational test. Specifically, the Division maintained that the dissolution provision in petitioner's constitution designated a particular organization (the Horseheads Free Library), as opposed to an exempt purpose, as the recipient of petitioner's assets upon dissolution. However, subsequent to filing its petition herein, petitioner amended its constitution to provide that the recipient of its assets upon dissolution could be any charitable organization. The Division has agreed that this amendment cures the defect in the dissolution clause of petitioner's constitution, that petitioner thus meets the organizational test for exemption, and that such basis for denial has been withdrawn.

represent amounts paid by the members to cover the costs of their own meals. Petitioner argues instead that only the net result from these three events (the \$643.37 amount by which expenditures for these three events exceeded receipts) should be viewed as petitioner's expenditures not used for charitable purposes.

11. The Division maintains that petitioner's receipts from nonexempt activities include the revenue from its fund-raising events set forth above because these events are social and recreational in nature. The Division further asserts that the receipts from the individual members for the costs of their meals at the dinners and luncheon constitute income to petitioner, with such receipts properly classified as receipts from nonexempt social and recreational activities.

12. There is no claim or evidence that petitioner has been accorded tax exempt status for Federal income tax purposes under Internal Revenue Code § 501(c)(3).

CONCLUSIONS OF LAW

A. Tax Law § 1116(a)(4) exempts certain organizations from the imposition of sales and use taxes if such organizations are "organized and operated exclusively" for an exempt purpose. Among the exempt purposes enumerated in section 1116(a)(4) is "charitable" and, according to petitioner's constitution and its application for exemption, this is the exempt purpose for which petitioner is organized and operated.

B. Regulations of the Commissioner of Taxation describe the term "charitable" as follows:

The term "charitable" includes relief to the poor, distressed, or underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or to lessen neighborhood tensions; to eliminate prejudice and discrimination; to defend human and civil rights secured by law; or to combat community deterioration and juvenile delinquency (20 NYCRR 529.7[e][ii]).

C. Under regulations of the Commissioner of Taxation, an organization will be granted an exemption if it meets both an organizational test and an operational test (20 NYCRR 529.7[c], [d]). Here, the Division has conceded that petitioner meets the organizational test (*see*, Finding of Fact “9”, n. 2). Accordingly, the issue presented is whether petitioner has shown that it meets the operational test for exemption, i.e., that petitioner is operated exclusively for an exempt purpose.

D. The operational test relates to the actual activities of the organization (20 NYCRR 529.7[d][1]). The Commissioner’s regulations provide that an organization will be considered as “operated exclusively” for one or more exempt purposes “*only if almost all of its activities accomplish one or more exempt purposes specified in section 1116(a)(4) . . .*” (20 NYCRR 529.7[d][2]; emphasis added). The regulation further provides that an organization will *not* be regarded as “operated exclusively” if “more than an insubstantial part of its activities is not in furtherance of an exempt purpose” (*id.*).

E. The Division correctly denied petitioner’s application for tax exempt status for sales and use tax purposes because petitioner does not meet the operational test. The record in this case reveals that petitioner is not operated exclusively for charitable purposes, but rather that clearly more than an insubstantial portion of its activities is social and recreational in nature. Petitioner does conduct or sponsor a number of activities and events to raise funds, and such funds, after expenses, are distributed to various worthy causes. However, a more detailed examination of this overview of petitioner’s operation reveals that numerous social or recreational events are included in petitioner’s regular ongoing activities. As shown by the review of petitioner’s newsletters and the minutes of its meetings there is, in addition to a discussion of club business, usually a speaker or some type of program, demonstration, activity or entertainment provided at petitioner’s monthly meetings (*see*, Finding of Fact “6”). Furthermore, there is undeniably a social and

recreational aspect to some of petitioner's fund-raising activities, including the fashion shows and card parties, bridge tournaments, and the like. In addition, while the annual fall dinner and June luncheon include a club business meeting, the overall tenor of these events, as described, reflects a social gathering. More directly, the Christmas dinner appears to be entirely a social function with minimal, if any, club business or charitable endeavors involved.³

F. With regard to the annual dinners and luncheons, petitioner would eliminate (as club income and expense) the payments received from members for the cost of their meals at these functions, as well as petitioner's subsequent payments to the restaurants for such meals, apparently arguing that such an arrangement represents merely a flow-through of funds. Under this argument, petitioner would include only the net cost of the events (e.g., \$643.37 as opposed to \$2,939.37 for the fiscal period July 1, 1995 through June 30, 1996) among expenditures for nonexempt purposes, thereby decreasing the dollar amount of its funds viewed as spent on nonexempt activities. However, regardless of whether the net result rather than the total receipts and expenses of these events is included, the critical fact remains that each of these events is a regular, almost entirely social, activity held annually by petitioner. These dinners and luncheons, accounting for three out of petitioner's ten yearly meetings, are not fundraisers, as petitioner admits, and by their description fall into the realm of social or recreational activities or events. While the balance of petitioner's meetings seem to involve more discussions concerning planning and executing the events held in furtherance of petitioner's fund-raising and community betterment activities, such meetings also include a presentation, lecture, activity or form of

³ As the Division points out by brief, the use of exempt status in connection with purchasing members' meals at the fall and Christmas dinners and the June luncheon, which events are not fundraisers but rather are essentially social functions, would be entirely inconsistent with granting petitioner exempt status as a charitable organization under Tax Law § 1116(a)(4).

entertainment essentially unrelated to petitioner's charitable endeavors. In sum, the record clearly bears out that more than an insubstantial part of petitioner's activities are social or recreational in nature, and are not in furtherance of an exempt purpose. Accordingly, petitioner's request for tax exempt status was properly denied.

G. While petitioner raises and distributes funds to a number of worthwhile and charitable causes, it remains that petitioner operates in many ways like a social group for its members (*see, Matter of Airmont Senior Citizen Club*, Tax Appeals Tribunal, March 6, 1997; *see also, Matter of Farmingdale Family of Retirees*, Tax Appeals Tribunal, November 23, 1990). There is no doubt that petitioner contributes to the quality of life in Horseheads, and its officers and members should be commended for petitioner's contributions to the community. At the same time, however, it is clear that petitioner does not meet the very narrow requirements necessary to qualify as an exempt organization under Tax Law § 1116(a)(4). Accordingly, the petition of Horseheads Women's Club is hereby denied.

DATED: Troy, New York
October 1, 1998

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE